



DISCIPLINARY PROCESS FOR LAW ENFORCEMENT EMPLOYEES

Directive 5 - 103

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I. PURPOSE

The purpose of this Directive is to establish a written disciplinary process for law enforcement employees.

II. POLICY

The Department of General Services Maryland Capitol Police (DGS-MCP) will accept and investigate complaints made against members in a manner that is fair and impartial. The results of investigations will exonerate the innocent and establish the guilt of violators of departmental policy, rules, regulations or law. Discipline will be administered in a just and fair manner. The rights of the Police Officers and citizens are acknowledged and will be protected.

III. DEFINITIONS

- A. Brutality is considered to include any situation wherein a law enforcement officer, while acting in his official capacity, resorts to the use of force which is unnecessary in its origin and application; or if force is deemed necessary, is excessive in its application.
- B. Complaint is an allegation of misconduct, inappropriate performance, or violations of any law, Departmental policy, procedure, or directive that is made against any member of the Department.
- C. Counseling is a written or verbal communication between a subordinate and a supervisor that involves performance-related issues. Counseling is a non-disciplinary corrective action.
- D. Hearing means a proceeding during an investigation conducted by a hearing board to take testimony or receive other evidence.
- E. Hearing Board means a board that is authorized by the Chief of Police to hold a hearing on a complaint against a law enforcement officer.
- F. Preponderance of the Evidence is defined in the Maryland Civil Pattern Jury Instructions as follows: to prove by a preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in the factfinder's mind a belief that it is more likely true than not true. If the evidence is evenly balanced on an issue, then a fact finder's finding on that issue must be against the party who has the burden of proving it.
- G. Emergency Suspension can be imposed by the Chief of Police or his designee when it is determined to be in the best interest of the public, the officer or the Department. The suspension will be with pay unless the officer has been charged with a felony.
- H. Letter of Reprimand is the lowest form of punishment issued by the Department. A letter of reprimand documents that a violation has taken place and is placed in the officer's personnel file.

- I. Exonerated is a disposition used when investigations determine that the incident did occur, but the actions of the accused were justified, lawful and proper.
- J. Not Sustained is a disposition used when an investigation fails to disclose sufficient evidence to prove or disprove an allegation.
- K. Sustained is a disposition used when the investigation disclosed sufficient evidence to establish the culpability of the accused.
- L. Unfounded is a disposition used when the investigation indicates that the alleged acts did not occur.
- M. Summary Punishment can be imposed by the Chief of Police or his designee if the facts of the case are not in dispute and the accused officer waives his right to a hearing. Summary punishment cannot exceed three days suspension without pay or a fine of \$150.
- N. Final Order is the decision of the Chief of Police, after reviewing the hearing board's findings, conclusions, and recommendations. If the hearing has been waived, the decision is rendered after the case is reviewed.

IV. PROCEDURES

Disciplinary Procedures for Law Enforcement Employees

The rules and regulations in this directive define policy for the imposition of discipline upon police officers within the Department. These rules and regulations are guides for handling disciplinary actions and generally should be followed. In unusual situations not covered by this directive, or where strict adherence to these rules would work an injustice, deviations from the rules and regulations are permitted.

A. Law Enforcement Officers' Bill of Rights'

1. The purpose of the Law Enforcement Officers' Bill of Rights is to guarantee certain procedural safeguards to law enforcement officers during any investigation or interrogation or subsequent hearing that could lead to disciplinary action, demotion or dismissal. The provisions of the Law Enforcement Officers' Bill of Rights, hereinafter referred to as LEOBR, are enumerated in the Public Safety Article of the Annotated Code of Maryland.
2. The LEOBR does not limit the authority of the Chief of Police to regulate the competent and efficient operation and management of the DGS-MCP by any reasonable means, including transfer and reassignment if:
 - a. The action is not punitive in nature: and
 - b. The Chief of Police determines the action to be in the best interests of the internal management of the law enforcement agency.
3. All disciplinary matters, including but not limited to the investigation of complaints, interrogation of officers and the use of hearing boards will be handled in a manner that is consistent with the LEOBR and any other applicable laws.
4. A law enforcement officer may waive in writing any or all rights granted by the LEOBR.
5. With the exception of a complaint of brutality, a probationary officer is not covered by the Law Enforcement Officers Bill of Rights.

B. COMPLAINTS AND INQUIRIES

1. Any person that makes an inquiry about police procedures, practices or clarification of laws or complains about the performance of a police officer will be treated with courtesy and respect.
2. If a person makes an inquiry about police procedures, practices or clarification of laws, the officer providing the assistance does not have to document the contact.
3. All complaints, including those received anonymously, alleging improper conduct or performance by a police officer will be recorded on a complaint form. This will be done regardless of the duty status of the police officer at the time of the incident that the officer is/was allegedly involved.
4. Complaints against members may be received by email, telephone, or in writing.
5. If a police officer wishes to make a complaint concerning another officer, a complaint form will be completed and submitted without unnecessary delay.
6. If a citizen arrives at a building or other area where the DGS-MCP have a presence and wants to make a complaint about a police officer, a supervisor of the rank of sergeant or higher will meet with the citizen whenever possible.
7. Officers taking complaints will make every effort to identify:
 - a. The person making the complaint;
 - b. Anyone involved in the alleged incident; and
 - c. Any reported witnesses that may have information concerning the incident.
8. All complaints will be handled as a confidential matter. Members that receive complaints concerning an officer will not discuss the nature of the complaint or any details with the officer allegedly involved or any other unauthorized person.
9. All complaint forms will be promptly forwarded to the Chief of Police or his designee.
10. Any citizen wishing to withdrawal a complaint will be asked to make the request in writing and explain the reasons for their decision to withdrawal the complaint.

C. NOTIFICATIONS

The following incidents must be reported to the Chief of Police or his designee immediately:

1. All cases wherein a member is arrested or criminally charged;
2. All cases involving domestic violence or child abuse;
3. All cases involving allegations of violation of criminal statutes;
4. All cases that relates to the integrity of the member, regardless of whether or not criminal charges are filed;
5. All cases where an arrestee or other person is treated and admitted to a medical facility because of injuries sustained during police contact;
6. All cases involving significant community interest, civil unrest, or which receive media coverage that depicts or otherwise indicates police misconduct;
7. All cases where a police officer has, or is alleged to have been involved in a shooting incident/discharge of firearms, except during practice or qualification sessions.
8. Refusal to submit to drug or alcohol testing when ordered to do so.

D. COMPLAINTS OF BRUTALITY

1. A complaint against a law enforcement officer that alleges brutality in the execution of the law enforcement officer's duties may not be investigated unless the complaint is sworn to, before an official authorized to administer oaths, by:
 - a. The aggrieved individual;
 - b. A member of the aggrieved individual's immediate family;
 - c. An individual with firsthand knowledge obtained because the individual was present and observed the alleged incident; or
 - d. The parent or guardian of the minor child, if the alleged incident involves a minor child.
2. Unless the complaint is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action for brutality may not be initiated and an action may not be taken.
3. The Maryland Court of Special Appeals has ruled that the Law Enforcement Officers Bill of Rights, pertaining to brutality complaints are designed to "protect the law enforcement officers from being subjected to the harassment of frivolous complaints received from outside the police agency." The Court ruled that the law enforcement agency may initiate an investigation of its own volition and that if the investigation leads to charges being made against a police officer, their adjudication may proceed.
4. The Maryland Court of Appeals has ruled that if "a qualified complainant files a sworn brutality complaint within the 90-day period, the police agency has a duty to proceed with an investigation. If that same complainant files a sworn complaint more than 90 days after the incident of alleged brutality, there is no duty to investigate. But if the police agency decides on its own to proceed with the investigation, and with the placing of charges if the investigation so indicates, the [LEOBR] does not prevent it from doing so." The Chief of Police reserves the right to order an investigation concerning the conduct of any officer(s) involved in a situation if the Chief of Police deems it appropriate to do so.

E. DISCIPLINARY ACTIONS RELATED TO EMPLOYEE PERFORMANCE

1. The appointing authority may discipline an employee for reasons related to employee's performance. These reasons include but are not limited to:
 - a. That the employee is incompetent or inefficient in the performance of the employee's duty;
 - b. That the employee is an individual with a disability who with a reasonable accommodation cannot perform the essential functions of the position; or
 - c. That the employee currently is not qualified for the position.

F. COUNSELING

1. A supervisor may counsel a subordinate when the member's performance indicates the need for remedial action, such as that designed to prevent a recurrence of the problem.

2. At the discretion of the supervisor, the counseling may be documented by completion of a counseling form.
3. If a counseling form is used, the supervisor will sign it and request that the subordinate sign it. If the subordinate refuses to sign the form, the supervisor will write "REFUSED" in the space reserved for the officer's signature.
4. Counseling a subordinate and placing a counseling form in the officer's personnel file is not punishment. The counseling itself is remedial in nature and the placing of the counseling form in the file is part of an internal administrative record keeping function. Counseling sessions do not amount to either interrogation or investigation. The Maryland Court of Special Appeals has ruled that even though an officer has been counseled by a supervisor and a counseling form placed in the officer's personnel file, the Chief of Police may still investigate the matter and ultimately punish the officer for the action/inaction that led to the initial counseling without violating the principles of double jeopardy or the LEOBR.

G. EMERGENCY SUSPENSIONS

1. An emergency suspension of an employee's police powers may be imposed when it is deemed to be in the best interests of the public and the law enforcement agency. Such suspension may be imposed against a law enforcement officer only after consultation with the Chief of Police or his designee. When an employee's police powers have been suspended his Department issued firearm, badge, DGS-MCP Police Identification card, and Maryland police officer certification card, will remain the custody of his Detachment Commander and he will not exercise police authority.
2. Actions involving the suspension of police powers are generally related to matters, however, such a suspension may be imposed in the best interest of the employee, the Department and the public for issues related to medical considerations. Where an employee's police powers are suspended for medical reasons, not associated with the disciplinary process, an emergency suspension review hearing is not required. Instead, these cases may be promptly reviewed by the State Medical Director and, when necessary, referred to an appropriate specialist to obtain a fitness for duty evaluation.
3. A suspended employee's Detachment Commander shall arrange for the convening of an emergency suspension review Hearing Board in all cases relating to suspensions involving disciplinary process. The suspended employee will be ordered to appear for the suspension review hearing to determine if the suspension will be terminated or continued pending disposition of the charge(s).
 - a. A police employee so suspended shall be entitled to a prompt emergency suspension review hearing.
 - b. An employee whose police powers have been suspended may choose to waive the review hearing. This waiver must be documented in writing and submitted to the employee's Detachment Commander prior to the review hearing.
 - c. The review board will be comprised of three members, at least one of which shall be the same rank as the suspended employee.

- d. The review board shall conduct the hearing in order to formulate recommendations to the Assistant Secretary for facilities, Operations and Maintenance regarding the emergency suspension. The Board shall limit the subject of its review in determining if the continuation of the suspension of police powers is necessary to protect the interests of the public or the Department pending final disposition of the charge(s). The Board shall also consider whether other assignment of leave status alternatives should be considered. At this review the employee may:
 1. be accompanied by counsel; however, only matters dealing directly with the determination of the suspension will be heard.
 2. rebut the reason(s) given for the suspension
 3. present mitigating testimony
 4. suggest alternatives to suspension
 - e. The presenter of facts will present information to the review board and will make recommendations concerning the employee's leave status, temporary assignment during the period of suspension and/or whether the suspension should continue with or without pay.
 - f. An emergency suspension of police powers without pay may only be imposed when the suspended employee has been charged with the commission of a felony.
 - g. The hearing will be tape recorded. At the conclusion of the hearing the tape will be sealed in an envelope and forwarded to the employee's Detachment Commander for retention and inclusion in the investigative case file, if any.
 - h. At the conclusion of the hearing, the review board will advise the employee that the suspension will continue pending the Chief of Police or his designee decision and that the employee will be notified of the decision in writing.
 - i. The Board Chairman will ensure the report containing the Board's recommendations will be completed and forwarded to the Chief of Police or his designee expeditiously.
4. After reviewing the Board's report the Chief of Police or his designee may concur, amend or reverse the recommendation. When the decision has been made, a copy of the details of the decision will be promptly delivered to the employee.
 5. The original Review Board report, along with the final decision, shall be included in the investigative case file if any.

H. SUMMARY PUNISHMENT

1. In all cases when a law enforcement officer is charged with a violation of Department rules, policy, or procedure, such charges may be heard by the Hearing Board. If a Detachment Commander considers the charge placed against one of his subordinates to be minor, he may allow

the accused to elect to have these charges disposed of by summary punishment after consultation with the Assistant Secretary for Facilities, Operations and Maintenance. In no instance, however, may the accused choose summary punishment unless his Detachment Commander approves of such a course of action.

2. The authority to impose summary punishment charges a Detachment Commander with the responsibility of exercising his authority in a fair and judicious manner. The Commander must ensure that the case investigator promptly provides the Commander with sufficient information to make an appropriate disposition of the incident. The investigation should reveal:
 - a. whether an offense was committed.
 - b. whether the employee was involved in the offence.
 - c. the disciplinary record of the employee
 - d. recommendations as to sustained or non-sustained findings.
3. Any decision, order or action taken as a result of summary punishment shall be accompanied by findings of fact. The findings shall consist of a concise statement of each issue in the case.
4. If the accused is given the option of choosing the hearing authority, he must make his choice within three days after he receives the Notification of Charges/Waiver of LEOBR and Acceptance of Summary Punishment, DGS-MCP Form 181. If he elects summary punishment, he shall complete the reverse of DGS-MCP Form 181 and return the form to the Detachment Commander. The failure of the accused to select the hearing authority and to submit the form within three days shall be considered his waiver of summary punishment and the commander shall process the case in accordance with the procedure specified in the subsection entitled "Hearing Board".

I. HEARING BOARD

1. Jurisdiction

It shall be the function of the Hearing Board to hear all disciplinary charges against a law enforcement officer not disposed of by summary punishment. Hearings will be conducted pursuant to the Administrative Procedure Act as modified by the Law Enforcement Officers Bill of Rights. The Hearing Board Chairman and other members of the board should be flexible and should not apply these rules, regulations and rules of evidence mechanically.

2. Organization

- a. Generally a Detachment Commander may serve as the Chairman of the Hearing Board.
- b. The Chairman of the Hearing Board may, appoint an officer from DGS-MCP, or from another agency. The Board will consist of (3) three members, one of whom shall be of a rank equal to the accused. No member of the Hearing Board may have participated in the investigation or interrogation of the accused law enforcement officer.

3. Case Preparation

- a. If the accused elects to have the case tried before a Hearing Board, the case file, including the Notification of Charges, shall be forwarded by the accused's Detachment Commander.
- b. Generally, the Assistant Attorney General assigned to the Department of General Services will serve as prosecutor for Hearing Boards.
- c. When a case is reviewed and considered sufficient for prosecution, the Notification of Charges will be forwarded to the employee's Detachment Commander for the presentation to the employee. After the employee has signed the Notification of Charges, the Commander will provide the employee with a copy and forward the original Chairman of the Hearing Board.
- d. Upon receipt of the signed Notification of Charges from the employee's Commander, the Chairman of the Hearing Board shall appoint a prosecutor and Hearing Board. The accused shall be notified of the members of the board, location and the date of the hearing via DGS-MCP Form 183, Notification of Hearing.
- e. Neither the Chairman, nor any members of the Hearing Board, may have access to, be given a copy of, nor in any other way appraised of the contents of the investigative file prior to the commencement of the hearing. Hearing Board members shall be privileged only to information contained in the Notification of Charges, which will be forwarded to them by the Chairman of the Hearing Board. However, the accused shall be furnished with a copy of the investigatory file, excluding the identity of confidential sources and recommendations as to charges, disposition or punishment, not less than ten days before any hearing if the officer and the officer's representative agree:
 1. to execute a confidentially agreement with the law enforcement agreement with the law enforcement agency to not disclose any of the material contained in the record for any purpose other than to defend the officer; and
 2. to pay any reasonable charge for the cost of reproducing the material involved.

4. Hearing Procedures

- a. When the Chairman of the Hearing Board has received notice approving prosecution, he shall act promptly to select a Hearing Board.
- b. Both prosecution and defense must exchange the names of all witnesses to be called and a copy of all documents and any other evidence to be used at least ten days in advance of the hearing date.

- c. Postponements will be made by the Hearing Board Chairman and all requests shall be directed to him.
- d. Amending Charges – At any time before the verdict, the Hearing Board Chairman may grant a motion to amend charges to conform to the evidence or new charges to be filed. In either case, the accused, if requested, will be granted a continuance to prepare for the amended or new charges.
- e. The Chairman of the Hearing Board shall administer an oath to witnesses who will testify at the hearing. He may also issue summonses to compel the attendance and testimony of witnesses, and the production of books, paper, records and documents as may be relevant or material. These summonses may be served in accordance with the Maryland Rules of Procedure pertaining to service of process issued by a Court, without cost. Either party may request the Chairman of the Hearing Board to issue a summons. The acknowledgment of the summons will be returned to the Chairman of the Hearing Board and made part of the case file.
- f. When claimed, witness fees, mileage and actual expenses necessarily incurred in securing the attendance of witnesses summoned by the prosecution or defense shall be allowed the same testimony in a Circuit Court. Such expenditures will be itemized and submitted to the Hearing Board Chairman. Department employees are not eligible for witness fees.
- g. Preliminary Motions – All preliminary motions shall be filed with the Chairman at least ten days (excluding weekends and holidays) before the hearing date. The parties must respond to these motions in writing within seven days of the date received. The Chairman, in consultation with other members of the board, shall rule on the motion before or at the hearing. Absent a showing of good and substantial reason, preliminary motions will not be considered on or after the hearing date. The Chairman in his discretion will decide on a continuance requested as a result of board rulings on preliminary motions.
- h. Plea Bargaining – The prosecutor may engage in plea bargaining at any time prior to or during a hearing. If a plea bargain agreement is reached, the prosecutor will then notify the Hearing Board Chairman so that further proceedings may be cancelled.
- i. If the accused employee expresses a desire to plead guilty and proceed on a statement of facts but desires the Hearing Board to decide the penalty, the prosecutor will then notify the Hearing Board Chairman as to the fact. If time permits, the Chairman of the Hearing Board will notify nonessential witnesses that they will no longer be required to testify. The Hearing Board will then convene to hear the statement of facts, receive the guilty plea and conduct the penalty phase of the proceeding.
- j. The hearing will be conducted in accordance with the procedures set forth in the Disciplinary Hearing Procedures Manual.
- k. The Chairman conducting the hearing shall administer oaths or affirmations and examine any individual under oath concerning the subject of any hearing conducted pursuant to these procedures.

- l. Cases presented to a Hearing Board are administrative proceedings and as such are not subject to the same rules of evidence which govern the conduct of criminal proceedings. Although testimony must bear only on facts concerning the instant case, the restrictions applicable to hearsay evidence, written statements, and other forms of evidence in criminal actions, do not apply to administrative hearings.
- m. The Hearing Board may take notice of judicially cognizable facts and of general, technical and scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference to preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity and reasonable time to contest the facts so noticed. A Hearing Board may use its experience, technical competence, and specialized knowledge in evaluating the evidence presented.
- n. An administrative hearing is not a judicial proceeding and requires, on appeal, only that the Department's findings be supported by competent, material and substantial evidence and that the action of the board is not arbitrary, capricious or illegal. A majority of the board shall decide the verdict on each charge and any order or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement of each issue in the case. A Hearing Board shall reconvene the hearing, receive evidence of the employee's past job performance, matters of extenuation and mitigation and other relevant information and recommend a penalty to the Chief of Police. The prosecutor will be responsible for providing the accused's personnel files to the Chairman for the Hearing Board's consideration. The findings and conclusion and the written recommendations for action shall be delivered or mailed promptly to the law enforcement officer.
- o. The Chairman of the Hearing Board shall keep an official record of each hearing, which shall become a part of the original case file. The record shall include testimony, exhibits, the exact times the hearing was convened and terminated and the exact times of the beginning and termination of each recess taken during the hearing. The Chairman of the Board is also responsible for tape recording all hearings. The tapes shall become a permanent part of the record.
- p. No firearms will be permitted in the Hearing Board room.

5. Disposition

In any proceeding before a Hearing Board, the accused may be found not guilty on any specified charge and informed of the decision or he may be found guilty on any specified charge and informed of the sentence recommended.

6. Disciplinary Recommendations

- a. After a finding of guilt, the Hearing Board may review the accused's personnel file and thereafter recommend penalties as it considers appropriate under the circumstances, including but not limited to demotion, dismissal, transfer, loss of pay, reassignment, or other similar action which would be considered punitive. A Hearing Board convened

because the accused refused summary punishment may recommend only those penalties permitted for summary punishment.

- b. If the decision of the Hearing Board is not unanimous, in either the verdict or the penalty, the dissenting member may, but is not required to, submit a minority report expressing his views. If the dissenting member elects to submit a minority report, it will be submitted to the board Chairman, who will forward it along with the Hearing Board report.
- c. If the Chief of Police is an eyewitness to the incident which led to the charges being placed, the decision of the Hearing Board, both as to findings of fact and punishment is final. This decision may only be appealed to the court.
- d. The Hearing Board's recommendation for penalty is not binding on the Chief of Police. He shall review the findings and recommendation, and indicate his concurrence or nonconcurrence in writing.

J. DISCIPLINARY PROCEDURES FOR PROBATIONARY OFFICERS

- 1. Complaint processing, investigations, and disciplinary action involving probationary officers resulting from allegations of brutality shall be administered in accordance with Section 5 and the Law Enforcement Officer's Bill of Rights.
- 2. All other complaint processing, investigations, and disciplinary action involving probationary officers shall be in accordance with Section 6, State Personnel and Pensions Article and COMAR.

K. APPEALS PROCESS

If a hearing board finds that a police officer is guilty of one or more of the charges, the officer may appeal the case to the Circuit Court. The appeal must be made within thirty days of the final decision of the Chief of Police concerning disposition of the case. If an officer wishes to appeal the decision of the Circuit Court, the case may be appealed to the Court of Special Appeals.

L. ADVERSE MATERIAL

The Department will not insert adverse material into the personnel file of a police officer unless the officer has an opportunity to review, sign, and receive a copy of, and comment in writing on the adverse material.

M. EXPUNGEMENT

- 1. An officer, upon written request, may have any record of a formal complaint made against him expunged from any file if:
 - a. The Department has exonerated the officer of all charges in the complaint; or determined that the charges were unsustainable or unfounded, or an administrative hearing board acquits, dismisses, or makes a finding of not guilty; and

- b. Three years have passed since the findings by the Department or hearing board.
- 2. If the requirements for expungement have been met, the Chief of Police or his designee will notify the officer, in writing, the date that the expungement was completed.
- 3. If the conditions for expungement have not been met, the Chief of Police or his designee will notify the officer, in writing, why the expungement cannot be granted.
- 4. Notification to the officer of the decision concerning expungement will be made within thirty days of receiving the officer's request for expungement.